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**Attorneys for Defendants**  
*(Please see following page for complete list of parties represented.)*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

(The Honorable Marilyn H. Patel)

1 Attorneys for Defendants:  
2 San Francisco Unified School District, San Francisco  
3 Board of Education, City and County of San Francisco,  
4 Eric Mar, Mark Sanchez, Jane Kim, Kim-Shree Maufas,  
5 Norman Yee, Jill Wynnns, Hydra Mendoza, Carlos Garcia,  
6 Dan Kelly and Sara Lipson

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1           This matter came on for hearing on defendants' Motion to Dismiss on April 21, 2008.  
2 Plaintiffs were represented by LeRue Grim, Esq., and defendants were represented by Thomas A.  
3 Willis, Esq. The Court, having heard the arguments of counsel and considered the written  
4 submissions, finds as follows:

5           1. Plaintiffs brought this action against defendants under 42 U.S.C. section 1983,  
6 claiming that the San Francisco Board of Education violated their First Amendment rights by deciding  
7 to terminate the Junior Reserve Officer's Training Corps (JROTC) program after the 2008-09 school  
8 year. JROTC is a leadership program sponsored by the Department of Army and is offered to public  
9 and private high schools throughout the country. The JROTC program is part of the San Francisco  
10 Unified School District's curriculum because students receive academic credit for participating in the  
11 program. Plaintiffs claim that the District has violated their First Amendment rights by refusing to  
12 offer the JROTC program in the future. Plaintiffs do not contend that the School District has limited  
13 their speech in anyway. This is not a speech suppression case.

14           2. Defendants brought this motion to dismiss under Rule 12(b)(6) of the Federal  
15 Rules of Civil Procedure on the grounds that plaintiffs cannot state a valid cause of action because the  
16 First Amendment does not limit the ability of a school district to decide matters of school curriculum.

17           3. The Court agrees with defendants. Both the United States Supreme Court and  
18 the Ninth Circuit have held that school districts have broad discretion over curriculum decisions.  
19 Moreover, when a school district makes curriculum decisions, it is the speaker for First Amendment  
20 purposes. “[W]hen the State is the speaker, it may make content-based choices. When the University  
21 determines the content of the education it provides, it is the University speaking, and we have  
22 permitted the government to regulate the content of what is or is not expressed . . . .” *Rosenberger v.*  
23 *Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 833-34 (1995). In *Downs v. Los Angeles Unified*  
24 *Sch. Dist.*, 228 F.3d 1003, 1013 (9th Cir. 2000), the Ninth Circuit followed that standard by stating that  
25 “when a public high school is the speaker, its control of its own speech is not subject to the constraints  
26 of constitutional safeguards and forum analysis . . . .” See also *Chiras v. Miller*, 432 F.3d 606, 611  
27 (5th Cir. 2005); *Edwards v. California Univ. of Pa.*, 156 F.3d 488, 491 (3rd Cir. 1998).

4. The JROTC program is part of the School District's curriculum and therefore the School Board had discretion to decide to phase-out the program. The Board's decision to do so does not implicate the First Amendment. Therefore, plaintiffs have failed to state claim upon which relief can be based.

Upon the basis of the foregoing, the Court hereby ORDERS:

1. That defendants' motion to dismiss is granted.
  2. That plaintiffs' Petition for Declaratory and Temporary and Permanent Injunction is hereby dismissed with prejudice.
  3. That plaintiffs shall take nothing from this case.

IT IS SO ORDERED.

DATED:

**THE HONORABLE MARILYN H. PATEL  
UNITED STATES DISTRICT COURT JUDGE**

(00054317-2)